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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,894	04/10/2001	Robert Barriz	P/1318-127	8555

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EXAMINER

RHODE JR, ROBERT E

ART UNIT      PAPER NUMBER

3625

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/829,894	Applicant(s) BARRITZ, ROBERT	
	Examiner Rob Rhode	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 18 November 2005.
- 2a)  This action is FINAL.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1- 13 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1- 13 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 10 April 2001 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:
1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant amendment of 11-18-05 traversed rejections of Claims 1 - 13.

Currently, claims 1- 13 are pending.

### ***Drawings***

The drawings filed on 04/10/2001 as indicated in a previous rejection are acceptable subject to correction of the informalities indicated on the attached "Notice of Draftperson's Patent Drawing Review," PTO-948. In order to avoid abandonment of this application, correction is required in reply to the Office action. The correction will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 1, the word "criteria" is a relative word, which renders the claims indefinite. The word " criteria" is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree other than providing some examples, and one of ordinary skill in the art would not be reasonably appraised

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of the scope of the invention. Moreover, the word "criteria" as recited is so broad that establishing the metes and bounds of the claim are almost impossible. For examination purposes the word "criteria" will be defined as a user employing a standard on which a judgment or decision is based. For example, a shoe store owner is not going to seek out products on fire hoses too. Rather, they will base their requirements on the business needs such as shoes or related merchandise, which will be the standard upon which their decision will be made. As another example, they will not search for and download information on products, which do not related to the their business.

Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the word(s) "semi-automatically " and "substantially automatically" are a relative word/phrase(s), which renders the claims indefinite. The word " semi-automatically " and "substantially automatically" are not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For examination purposes the word "semi - automatically" and "substantially automatically" will be treated as a search criteria being entered each time for each separate item/merchandise by an individual such as business owner. Thereby, these steps are completed in a "semi-automatic" as well as "substantially automatically" fashion as result of each search criteria being entered manually and the results of the search for these products are downloaded/presented.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernardo (US 6,684,369 B1) in view of “Build the e-commerce catalog”; Saroja Girishankar; Information Week; Nov. 29, 1999 and hereafter referred to as “Catalog”.**

Regarding claim 1 (currently amended), Bernardo teaches a website constructor, comprising:

- a website organization module that defines a look and feel of the website constructed by the website constructor (see at least Abstract);
- a graphic design module that creates at least one website layout and features setup for the website constructed by the website constructor (see at least Figures 4 - 12); and
- a website builder that builds the website based on the criteria and conditions that have been setup by the foregoing modules (see at least Abstract, Col 1, lines 31 – 32, Col 2, lines 49 – 60, Col 3, lines 34 – 38 and Figures 5 and 30).

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While it is implicit in Bernardo that a merchant would establish a criteria for selecting merchandise such as selecting shoe related items for a shoe store and not fire hoses too, the reference does not specifically disclose or teach a selection criteria module that establishes a selection criteria for merchandise selection, a merchandise selection module in the website constructor that selects merchandise offered for sale on the website constructed by the website constructor that matches the selection criteria at least semi-automatically, the merchandise selection module being based on merchandise made available by a plurality of vendors; a merchandise information downloading module that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise offered for sale on the website constructor by the website constructor that has been selected by the merchandise selection module.

On the other hand, Catalog teaches a website constructor comprising a selection criteria module that establishes a selection criteria for merchandise selection (see at least Page 1 and 2),

a merchandise selection module in the website constructor that selects merchandise offered for sale on the website constructed by the website constructor that matches the selection criteria at least semi-automatically, the merchandise selection module being based on merchandise made available by a plurality of vendors (see at least Pages 1 - 3);

a merchandise information downloading module that downloads substantially

automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise offered for sale on the website constructor by the website constructor that has been selected by the merchandise selection module (see at least Pages 1 - 4).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have provided the constructor of Bernardo with the constructor of Catalog to have enabled a constructor comprising a selection criteria module that establishes a selection criteria for merchandise selection, a website organization module that defines a look and feel of the website constructed by the website constructor; a graphic design module that creates at least one website layout and features setup for the website constructed by the website constructor ; a merchandise selection module in the website constructor that selects merchandise offered for sale on the website constructed by the website constructor that matches the selection criteria at least semi-automatically, the merchandise selection module being based on merchandise made available by a plurality of vendors; a merchandise information downloading module that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise offered for sale on the website constructor by the website constructor that has been selected by the merchandise selection module and a website builder that builds the website based on the criteria and conditions that have been setup by the foregoing modules -- in order to enable a business to establish and conduct business at virtual site on the internet.

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Bernardo discloses a constructor for that defines look and feel and graphic design module for website layout (Abstract). In turn, Catalog discloses a constructor with a selection criteria module that establishes a selection criteria for merchandise selection, a merchandise selection module in the website constructor that selects merchandise offered for sale on the website constructed by the website constructor that matches the selection criteria at least semi-automatically, the merchandise selection module being based on merchandise made available by a plurality of vendors; a merchandise information downloading module that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise offered for sale on the website constructor by the website constructor that has been selected by the merchandise selection module (see at least Pages 1 - 3). Therefore, one of ordinary skill in the art at the time of the applicant's invention would have been motivated to extend the constructor of Bernardo with a constructor comprising a selection criteria module that establishes a selection criteria for merchandise selection, a merchandise selection module in the website constructor that selects merchandise offered for sale on the website constructed by the website constructor that matches the selection criteria at least semi-automatically, the merchandise selection module being based on merchandise made available by a plurality of vendors; a merchandise information downloading module that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise offered for sale on the website constructor by the website constructor that has been selected by the merchandise selection module. In this manner, the investment required



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by the website owner can be reduced as well the time to establish the website, which will enabled a more rapid ability to obtain sales on the web and thereby begin recouping the investment.

Regarding claims 2 and 3, Bernardo teaches wherein the system is operable semi-automatically (Figure 30) and in which the website is optimized for a retail operation (Col 1, lines31 - 32).

Regarding claim 4, Catalog teaches the website constructor, in which merchandise information comprises at least two of the following merchandise parameters that are selected from the group consisting of: product code, UPC code, SKU code, product description, retail price, product style, product color, product size, product ordering information, product incentive program, product image, and product tags (Pages 1, 2 and 4).

Regarding claim 5, Catalog teaches a website constructor, in which the merchandise information is provided in Extensible Markup Languages (XML) [Page 3].

Regarding claim 6, Catalog teaches in which the selection criteria comprises at least two parameters selected from the parameter group consisting of: category; subcategory; manufacturer; vendor; promotions; closeout; starting date and ending date of seasonal merchandise (Page 1).

Regarding claim 7, Bernardo teaches a website constructor, in which the website organization module defines the look and feel of the website by reference to one or more organization parameters selected from the parameter group consisting of: category; manufacturer; promotions; close-out; product appearance; and tags representing the begin and end dates for the placement of merchandise on the website ((Abstract).

Regarding claim 8, Catalog teaches in which the merchandise selection module enables a user of the website constructor to control downloading of merchandise information in a manner which enables: acceptance or rejection of marketing or merchandise information based on the selection criteria; selection of purchase orders, pricing schedules, and delivery schedules; and specification of loading information (Pages 1 and 4).

Regarding claim 9, Bernardo teaches a website constructor in which the website builder enables periodical rebuilding of the website (Figure 30).

Regarding claim 10, Bernardo teaches a website constructor, which a website builder enables rebuilding of the website based on the detection of changed condition (Figure 30).

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Regarding claim 11, the recitation that “in which the changed condition comprises a changed date”, such recitation is given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other “condition” already disclosed by Bernardo.

Regarding claims 12 and 13, the recitations that “in which the changed condition comprises the changing of the merchandise information by a vendor” and “in which the changed condition constitutes a manual intervention by a user of the website, such recitations are given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other “condition” already disclosed by Bernardo.

### ***Response to Arguments***

Applicant's arguments filed 11-18-05 have been fully considered but they are not persuasive.

Applicant argues that the 35 USC 112, second paragraph regarding “criteria” and “semi-automatically” as well as “substantially automatically” are not indefinite.

With respect to the word “criteria”, the criterion has to be entered by an individual, who has some criteria in mind. For example, an individual would not have any “criteria”, especially a businessperson when searching for merchandise. They have business requirements to satisfy and thereby would have criteria in mind such as types

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of shoes or associated products to search for and download the appropriate product information, which satisfy a business criteria that they entered. Thereby, they would have "criteria" associated with a business need and their decision is based on these business requirements such as shoes and which is taught by Catalog and implicitly taught by Bernardo.

The applicant's arguments regarding numerous Patent claims containing the words/phrases "semi-automatically" as well as "substantially automatically" is not persuasive. Quantity of patents is not considered to be precedential and particularly if these phrases were well defined in the disclosure. In addition and in line with the Applicant's admission, these searches for merchandise/items results from "minimum manual input from a user", which are based on a business decision criteria, which are most pertinent to the business site owner. Moreover, the Applicant in their current arguments states that these phrases (semi/substantially automatically) can be understood to mean the "process or feature of the invention will occur without or with minimal manual input". In that regard, is use of the language in the claim of "semi/substantially automatically" to be defined - with manual input or without manual input? Thereby, it is not possible to establish the metes and bounds of these claims with the use of these phrases - as defined by the Applicant in their arguments.

Applicant argues that Bernardo does not disclose a “tool” for building a website nor does the reference disclose a “merchandise selection module” or a “merchandise information downloading module”.

First and in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In that regard, Catalog was the reference, which taught the claim limitations of “merchandise selection module” and “merchandise downloading module” (see above rejection). Second, the claims do not contain any claim language such as “tool”. However, Bernardo does teach extensively regarding a web site “tool” for building/constricting a website (Abstract, Col 2, lines 49 – 60 and Figure 30). Moreover, Bernardo would fairly suggest and teach that it is for use for building/constructing a website easily by an individual or business (Abstract and Col 1, lines 31 - 32). Furthermore, Bernardo discloses a method and system for incorporating products into the website (Figure 5).

Applicant argues the Catalog does not teach building a website nor does the reference disclose selection criteria for merchandise selection and downloading.

First and in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642

F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In that regard, Catalog would fairly suggest, and as noted above so would Bernardo of providing a selection criteria for the web site – since the business individual would have a clear business objective for the web site. (see Catalog Pages 1 and 3 – 4 and Bernardo Col 15, line 4 - 9). Thereby, the individual would not download information on products, which were not in support of the business/company objectives/products. With regard to downloading, Catalog as Bernardo would fairly teach and suggest to one of ordinary skill of downloading information products from other catalogs that are required by the business/company (see Catalog Page 1 and Bernardo (Figure 5)]. Moreover, these methods and systems for downloading and updating information/catalogs for websites were old and well known.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is "Pinacor's Eworksite 2.0 Receives Rave Reviews – eCatalog Now Available"; PRNewswire; Apr 26, 1999

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

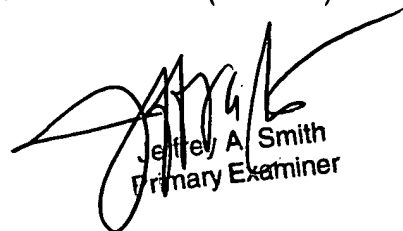
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Rhode whose telephone number is 571.272.6761. The examiner can normally be reached on M-F 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 571.272.7159 and Official Fax number is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). RER

  
Jeffrey A. Smith  
Primary Examiner